

# REPORT

**DATE:** February 7, 2008

**TO:** Energy and Environment Committee

**FROM:** Jeffrey S. Dunn, Government Affairs Analyst, (213)-236-1880, [dunn@scag.ca.gov](mailto:dunn@scag.ca.gov)

**SUBJECT:** HR 2421 (Oberstar): Clean Water Restoration Act of 2007

**EXECUTIVE DIRECTOR'S APPROVAL:**



## RECOMMENDED ACTION:

Work with author to identify potential exemptions to the bill.

## BACKGROUND:

HR 2421 (Oberstar) would alter the definition of water used in the Clean Water Act to clarify the federal government's jurisdiction over all kinds of water sources. The bill would strike references to "navigable waters of the United States" and would replace with "waters of the United States." The bill defines "waters" to include all lakes, rivers, streams, ponds and areas such as wetlands, wet meadows, mudflats, sloughs, prairie potholes and playa lakes.

HR 2421 is a response to two recent Supreme Court cases — Solid Waste Agency of Northern Cook County (SWANCC) v. Corps of Engineers in 2001 and Rapanos v. United States in 2006. In those cases, the Supreme Court held that the phrase "navigable waters of the United States" included only permanent and continuously flowing bodies of water and did not apply to channels where water flows intermittently or channels that periodically provide drainage for rainfall. The decisions precluded the EPA from governing water pollution under the Clean Water Act in some wetlands, for example, because they are not considered bodies of water.

Rep. Harry Oberstar (D-MN) and Sen. Russ Feingold (D-WI) have introduced identical legislation to change the definition of water in the Clean Water Act in every Congress since 2002. Congress did not act on any of the earlier measures but, with the change in the control of the Congress, HR 2421 is moving through the Congress. The House Transportation and Infrastructure (T&I) Committee scheduled a mark-up of the bill in December 2007, but postponed action on HR 2421 because the Congress had to finish so much business at year's end.

There are 165 co-sponsors to the bill. The Administration has not yet issued a SAP (Statement of Administration Position) on the bill. HR 2421 has received the support of many environmental organizations (over 300, including NRDC, Sierra Club, and National Wildlife Federation); the US Chamber of Commerce, National Association of Counties, and the American Farm Bureau have expressed opposition to the bill. Councilmember Larry Forester, representing the Coalition for Practical Reform, testified before House T&I Committee last July to express concerns of unintended consequences of the bill by burdening state and local jurisdictions with requiring excessive regulation for bodies of water that should not be subjected to the CWA's provisions.

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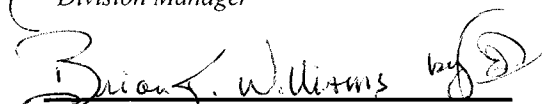
## FISCAL IMPACT:

All work related to this item is contained within the adopted FY 07/08 budget, WBS# 08-810.SCGS1.

Reviewed by:

  
Division Manager

Reviewed by:

  
Department Director

Reviewed by:

  
Chief Financial Officer